IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

S.T.C. No. 1 of 2007

Date of Decision: August 20, 2007

Singla Rice Mills (A Partnership Firm), Jakhal --- Petitioner

Versus

The State of Haryana and others --- Respondents

CORAM: HON'BLE MR. JUSTICE M. M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. K.L. Goyal, Advocate for the petitioner.

AJAY KUMAR MITTAL, J.

The petitioner is engaged in the business of rice shelling and is an assessee under the provisions of Haryana General Sales Tax Act, 1973 (for short "HGST Act"). The petitioner sold the rice by way of export out of the country amounting to Rs. 50,26,414/-. Some quantity of rice sold as such was procured from paddy which was purchased from within the State of Haryana. The sales were made against declaration forms ST-15A and H-forms for further export out of the country. The petitioner however, has not paid any tax on the purchase of paddy to the extent the rice had been procured out of paddy and sold

against H-forms. The petitioner was of the view that purchase of such goods was exempted from payment of tax under Section 5(3) of the Central Sales Tax Act, 1956 (for short " CST Act") read with Section 15 (ca) of the said Act. The Assessing Authority, however was holding an opinion that said purchase of paddy was not exempted from levy of purchase tax in the hands of the petitioner in view of decision rendered by the appellate authority i.e. the Joint Excise and Taxation Commissioner, (A), Rohtak (in short "JETC"). The Assessing Authority thus raised an additional demand of Rs. 2,28,302/- on account of tax and Rs. 70,774/- on account of interest chargeable under Section 25(5) of the Act vide order dated 25.6.1999 (Annexure P-1).

It is further evident from the averments made in the instant application that the petitioner preferred appeal against order Annexure P-1 and the learned JETC (A) on consideration of the matter set aside the order appealed-against by order dated 28.10.1999 by observing that "this type of export is fully covered u/s 5(3) of the CST Act in view of judgment (1999) PHT Page 139 STT Haryana in the case of M/s. Viru Mal Monga and Sons, Sirsa purchase tax is not leviable on paddy in view of Section 5(3) of CST Act read with section 15(ca) of HGST Act". But on a review application being filed by the Department on the strength of a plea that the judgment in the case of M/s. Viru Mal Monga and Sons, Sirsa on the basis of which the appellate authority had set aside the order Annexure P-1 has been reviewed by the Sales Tax Tribunal, Haryana which by its judgment dated 15.5.2000 has held that the paddy purchased by a rice sheller does not qualify for exemption from tax if the rice was sold under Section 5(3) of the CST Act.

Accordingly, the order passed by the JETC (A) exempting such paddy from levy of purchase tax was set aside and the order of the Assessing Authority levying purchase tax on such paddy was upheld.

Faced with the above, the petitioner carried appeal before the Haryana Tax Tribunal. The appeal was dismissed by order dated 16.3.2004 (Annexure P-3). The petitioner, however, once again sought intervention of the Haryana Tax Tribunal by filing a petition under Section 42 of the HGST Act for referring certain questions of law stated to be arising out of order dated 16.3.2004 (Annexure P-3) whereby the appeal of the petitioner had been dismissed. The petitioner sought reference on the following three questions which according to it are the questions of law arising out of order Annexure P-3, and the same read thus:

1- Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the order of the Assessing Authority in so far as it relates to tax on the purchase?

2- Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the levy of penalty?

3- Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the charge of interest?

The Haryana Tax Tribunal examined the matter and observed that none of the aforesaid questions can be said to be the questions of law referable to the High Court for its opinion. As regards question no.1 it was observed that the same had already been decided

by the High Court and the appellate order was based on the judgment of the High Court and therefore, the said point was not required to be referred for opinion of the High Court. As regards questions 2 and 3 are concerned, it was observed by the Tribunal that same have invariably been decided upto the level of the Apex Court. On these observations, the Tribunal did not find any question of law which necessitated any reference to the High Court. The Tribunal consequently dismissed the petition by order dated 6.2.2006 (Annexure P-3). It is this order of the Tribunal of which the petitioner has sought invalidation from this Court by preferring the instant petition under Section 42(2) of the HGST Act and has prayed for referring the questions of law arising out of order of the Tribunal, Annexure P-3.

We have heard learned counsel for the petitioner and perused the record.

The point that would arise under question no.1 is, whether the transaction involving purchase of paddy by the petitioner did not fall within the ambit of Section 5(3) read with Section 15(Ca) of CST Act, and whether it amounts to sale or purchase of paddy occasioning export outside India and, therefore, exisible to purchase tax.

The aforesaid issue came up for consideration before the Apex Court in Monga Rice Mill v. State of Haryana and another, (2004) 135 STC 549. The Apex Court after considering the provisions of Sections 5(3) and 15(Ca) of CST Act arrived at the conclusion that in the event of a party purchasing paddy and getting the rice milled out of the same and selling it to the third party who would then export it outside the territory of India, is not exempt from payment of purchase

tax. Similar view has been expressed by a Division of this Court in Monga Rice Mill v. State of Haryana and another, (2002) 125 STC 304. In the present case, the facts are similar and, therefore, the petitioner is liable to pay purchase tax on the paddy purchased by it.

Learned counsel for the petitioner could not dispute that the aforesaid issue is covered in favour of the revenue and against the dealer by the above noted two decisions i.e. the one of the Supreme Court and the other of a Division Bench of this Court.

Learned counsel for the petitioner, however, placed reliance upon a decision of the Supreme Court in *D.B. Madan v. Commissioner of Income-tax* (1991) 192 ITR 344 to contend that the Tribunal was not justified in refusing to refer the questions of law raised by the petitioner on the ground that the decision of the jurisdictional High Court was against the assessee inasmuch as the Apex Court has laid down that though the question of law might have already been settled by the High Court, still it needs to be referred as the question can be open for reconsideration in the event of subsequent Bench doubting the correctness of the earlier decision. The Supreme Court in *D.B. Madan's case (supra)* had noticed that it was not in all cases that the earlier view taken by the High Court would in a later case where similar issue arises, cease to be a referable one. It can still be a question of law if the subsequent Bench doubts the correctness of the earlier decision. The judgment in *D.B. Madan's case (supra)* does not help the petitioner. The issue raised in the present case stands concluded by the Supreme Court decision in *Monga Rice Mill's case [2004] 135 STC 549*. No

referable question of law thus arises and question no.1 has, therefore, been rightly declined by the Tribunal.

A perusal of the order of the Tribunal shows that question nos. 2 and 3 claimed by the petitioner do not arise from the said order as no arguments had been advanced regarding levy of penalty and charging interest, before the Tribunal. There is thus no merit in the petition and the same is accordingly dismissed.

(AJAY KUMAR MITTAL)
JUDGE

(M. M. KUMAR)
JUDGE

August 20, 2007
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